

Plan to Implement and Enforce the U.S.-Australia Free Trade Agreement

Prepared by the Office of Management and Budget

This report fulfills the requirements of Section 2108(a) of the Trade Act of 2002 (“the Act”).¹ This section requires that when the President submits a trade agreement to Congress under the Act, the President also must submit concurrently a plan for implementing and enforcing the agreement. Specifically, the plan must include the following:

Section 2108(a)(1)—Border Personnel Requirements: A description of the additional personnel required at border entry points, including a list of additional customs and agricultural inspectors.

Section 2108(a)(2)—Agency Staffing Requirements: A description of additional personnel required by Federal agencies responsible for monitoring and implementing the trade agreement, including personnel required by the Office of the United States Trade Representative, Department of Commerce, Department of Agriculture, Department of Treasury, and such other agencies as may be necessary.

Section 2108(a)(3)—Customs Infrastructure Requirements: A description of the additional equipment and facilities needed by the United States Customs Service.

Section 2108(a)(5)—Cost Analysis: An analysis of the costs associated with each of the above items.

The Office of Management and Budget has requested appropriate agencies to provide information on any additional staffing and equipment that will be required to implement and enforce the U.S.-Australia Free Trade Agreement and the costs associated with these needs. The agencies have reported that most can effectively implement and enforce the Australia FTA within their existing budgeted resources. For those few areas where agencies have identified additional staffing needs, the Administration intends to adjust existing budgeted resources and does not anticipate requesting additional funding from Congress.

Section 2108(a)(1)—Border Personnel Requirements

No additional border personnel are required.

Section 2108(a)(2)—Agency Staffing Requirements

The following agencies have identified additional staffing needs to implement and enforce the Australia FTA. The costs associated with these needs are negligible.

¹ The description of the impact of the trade agreement on State and local governments as a result of increases in trade required by Section 2108(a)(4) will be provided separately by the Office of the United States Trade Representative.

Agency	# FTE	Purpose
Environmental Protection Agency	.5	Ancillary cost to support joint US-Australian trade capacity initiatives with developing countries in the region; might result in the need to for 0.5 FTE to support regional trade capacity activities.
Department of Commerce—PTO	.5	Monitor, implement and help enforce intellectual property provisions
Department of Agriculture—Foreign Agricultural Service	1	Monitoring safeguard provisions and compliance with agricultural related commitments
Department of Labor—Bureau of International Labor Affairs (ILAB)	.25	On board staff reassigned to implement the labor chapter of the agreement

Section 2108(a)(3)—Customs Infrastructure Requirements

It is anticipated that no significant additional equipment or facilities are needed by the United States Customs Service.

United States-Australia Free Trade Agreement - Impact on State and Local Governments

I. Introduction

Businesses, workers, farmers and families in the fifty states will benefit from the United States-Australia Free Trade Agreement (FTA). Two-way annual goods and services trade with Australia is about \$28 billion, and the United States has a \$9 billion trade surplus with Australia. Australia is America's ninth largest goods export market. The increased access to Australia's market that an FTA will provide will further boost trade in manufactured goods, agriculture products and services, enhancing employment opportunities in both countries. An FTA also will encourage additional foreign investment between the United States and Australia, adding to the many jobs that the significant investment flows between the two countries currently support. In addition, an FTA will result in greater business integration, especially in the information technology sector, increasing efficiency and the competitiveness of U.S. industry.

During the course of negotiations, the Office of the United States Trade Representative (USTR) issued a notice in the *Federal Register* soliciting public comment, held a public interagency hearing, and consulted frequently with the Congress and interested stakeholders. U.S. negotiators convened meetings and teleconferences with some 700 cleared advisors from business, farm groups, labor unions, environmental groups, consumer organizations, and state and local governments and associations to discuss and seek their advice on U.S. negotiating positions. The negotiating texts of the U.S.-Australia FTA were made available throughout the course of trade negotiations to cleared advisors for comment and input via a secure encrypted section of the USTR website, and on March 3, 2004, the text of the Agreement was released to the public on USTR's website.

One of USTR's statutory advisory committees, the Intergovernmental Policy Advisory Committee on Trade (IGPAC), is comprised of representatives and associations representing executive, legislative and judicial branches of sub-federal government, as well as states, counties, and cities. The National Governors Association (NGA), Council of State Governments (CSG), the National Conference of State Legislatures (NCSL), the National League of Cities (NLC), the National Association of Counties (NACo), and the National Association of Attorneys General (NAAG) are among the organizations represented on the IGPAC. In 2003 and 2004, USTR revitalized and significantly expanded membership and geographic representation on the IGPAC, to include State Points of Contact designated by the Governors' offices, as well as state legislators and attorneys general nominated by NCSL and NAAG respectively. In February 2004, USTR appointed Kay Wilkie, a public official from the State of New York, as IGPAC Chair.

Pursuant to the Trade Act of 1974, each of the advisory committees including the IGPAC was required to produce a report on the impact of the U.S.-Australia FTA. In the IGPAC

report on the U.S.-Australia FTA (available in full at www.ustr.gov), the Committee states that:

“The U.S.-Australia Free Trade Agreement is supported by IGPAC members, as the agreement advances trade development in a manner generally beneficial to our national, regional and local economies. This agreement with our long-standing ally in the Asia-Pacific region should substantially improve the business environment while increasing trade and investment opportunities between our two nations. The elimination of virtually all tariffs on manufactured goods exports to Australia at inception is most welcome, as are other market opening provisions for services and agriculture. U.S. economic interests, entrepreneurs and employees would benefit from improved market access for goods, services, agricultural products, and from better access to government procurement opportunities.”

Additionally, the Committee notes that:

“Members of IGPAC support expanding trade and market access, while simultaneously maintaining a commitment to ensuring that trade laws, enforcement efforts and the dispute settlement process respect the authority of states and local governments to regulate and interpret land-use, labor, health, safety, welfare, and environmental measures.”

Based upon IGPAC’s report and other comments received regarding the potential impact of the Australia FTA on sub-federal governments, this Report addresses three main areas of interest to states and localities in the U.S.-Australia FTA: government procurement, services, and investment. Additionally, USTR has also taken into account states and localities’ overall interest in preserving sub-federal regulatory abilities and prerogatives.

II. Government Procurement

During the Uruguay Round negotiations, 37 states agreed to comply with the Agreement on Government Procurement (GPA), an agreement under the auspices of the World Trade Organization (WTO). These commitments are limited to the procurement of the entities that each state specified in Annex 2 to the GPA and are subject to thresholds and conditions for such procurement set out in the GPA. These states volunteered to cover some of their procurement because they understood that having states agree to nondiscriminatory procurement significantly improves the United States’ ability to persuade our trading partners to open their state or other sub-central procurement markets to U.S. suppliers, thus creating new opportunities for U.S.-based companies and workers.

Last September, USTR asked if those 37 states would be willing to extend to new FTA partners the same opportunities that they currently extend to the GPA signatory countries. USTR also asked the 13 states that are not covered by the WTO GPA whether they were willing to have their procurement covered under the WTO GPA, as well as under the free trade agreements under negotiation. As of the date of signature of the FTA, 27 states

have agreed to cover some of their procurement under Chapter Fifteen (Government Procurement) of the U.S.-Australia FTA. A list of the states is included as Attachment 1.

States that are already covered by the WTO GPA do not need to change their existing government procurement procedures or practices to implement the government procurement provisions in this FTA, except to ensure that those procedures or practices apply to Australia. Even a state that has not yet covered any procurement under a trade agreement would generally not require substantive changes in its procedures or practices to comply with the GPA or FTA requirements for covered procurements, except to ensure that these procedures or practices apply to our GPA or FTA partners.

In response to state inquiries, USTR also prepared for states a *Trade Fact Sheet* with the following points of clarification, to ensure that the states are fully informed that:

- a state's decision to make commitments in government procurement are voluntary;
- a state decides the extent to which it will cover its procurement under the new agreements;
- states may exclude sensitive goods, services and local development programs;
- the agreements also exclude preference programs for small business, distressed areas, minorities, and women;
- states are explicitly permitted to maintain their own environmental policies for 'green' procurement;
- county and city procurement is not covered by any of the agreements; and
- the thresholds for the application of the FTAs are high: in the Australia FTA \$477,000 for purchases of goods and services and \$ 6.7 million for construction contracts.

The IGPAC report notes that state and local governments reserve the right to condition their agreement not only on the terms of the final agreement and implementing legislation, but also on the inclusion of various terms and conditions in their acceptance letters.

III. Chapter Ten: Cross-Border Trade in Services

This Chapter covers the supply of services on a cross-border basis, which includes services supplied from the United States into Australia or vice versa, for example, supply via electronic means; by a national of a Party in the territory of the other Party; as well as the consumption of services in the other Party. Services supplied by an investment are generally covered under the Investment Chapter but also enjoy the protection of certain provisions in the Cross-Border Services Chapter. In its market access commitments, the U.S. includes a reservation for existing state level non-conforming measures ("a grandfather clause"); existing local level non-conforming measures are given the same protection through the text itself. Thus, while state and local governments are subject to

the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations which may be inconsistent with core obligations, such as market access, national treatment and most-favored-nation treatment.

Nothing in Chapter 10 or any other provision of the U.S.-Australia FTA requires the privatization or deregulation of any government services, including water supply or distribution services, education services or health services. The Chapter expressly excludes services supplied in the exercise of governmental authority.

The implementation of the Cross-Border Services Chapter should not require an additional commitment of resources by state and local governments.

The IGPAC report comments that “State and local governments generally support objectives to liberalize trade in services industries as a means of increasing market access for U.S. firms and for reaching trade development objectives. IGPAC members equally assert that the independent exercise of state and local legislative and regulatory power is critical to protecting citizens’ interests and safeguarding the federal system.” The IGPAC further notes that a general exemption for existing state and local measures could leave open the possibility of disputes about future changes, highlighting the need for USTR to educate and consult with state and local entities so that they are aware of such constraints upon future actions.

IV. Chapter Thirteen: Financial Services

This Chapter covers measures relating to investment in regulated U.S. and Australian financial institutions, and cross-border trade in financial services via electronic means, consumption abroad or nationals who travel abroad to supply. The Chapter does not apply to measures relating to public retirement plans or social security systems. While state and local governments are subject to the obligations of this Chapter, they will not be required to make any changes to existing laws or regulations which may be inconsistent with core obligations such as national treatment and most-favored-nation treatment. In its market access commitments, the U.S. includes a reservation for existing state level non-conforming measures (“a grandfather clause”); existing local level non-conforming measures are given the same protection through the text itself.

The implementation of the Financial Services Chapter should not require an additional commitment of resources by state and local governments.

V. Chapter Eleven: Investment

The investment chapter of the FTA draws upon and clarifies investment protections that have been included in U.S. treaties and free trade agreements for decades, including obligations pertaining to non-discrimination (national treatment and MFN), expropriation, free transfers related to covered investments, prohibition on use of performance requirements, minimum standard of treatment, and limitations on requirements on senior managers. In accordance with the directives provided by

Congress in granting Trade Promotion Authority, the provisions of the FTA on investment are designed to address the objective that foreign investors do not receive greater substantive rights than U.S. investors. We have also taken additional steps to protect States' regulatory authority.

First, while state and local measures are covered, all existing inconsistent measures are excluded from the obligations in the investment chapter pertaining to most-favored-nation treatment, national treatment, performance requirements, and senior management and boards of directors. Only future State measures will be covered by these provisions.

Second, the investment chapter draws directly upon U.S. legal principles and practices. For example, consistent with U.S. takings and due process protections, the FTA clarifies that only property rights or property interests in an investment are entitled to expropriation protection. The expropriation annex also incorporates standards defined by the U.S. Supreme Court for determining when a government measures rises to the level of an expropriation.

In recognition of the unique circumstances of this Agreement – including, for example, the long-standing economic ties between the United States and Australia, and their shared legal traditions, and the confidence of their investors in operating in each other's markets – the two countries agreed not to adopt procedures in this FTA that would allow investors to arbitrate disputes with governments.

V. Regulatory Interests

The U.S.-Australia FTA does not affect the right of the United States and sub-federal governments to establish, maintain, and fully enforce domestic laws protecting consumers, health, safety, and the environment.

VI. Conclusion

States and localities are poised to take advantage of the U.S.-Australia FTA. More than 99 percent of U.S. exports of manufactured goods to Australia will become duty-free immediately upon the entry into force of the Agreement, providing immediate benefits for America's manufacturing workers and companies. All U.S. agricultural exports to Australia, totaling more than \$400 million, will receive immediate duty-free access, thus benefiting agricultural producers across the states. The FTA between Australia and the United States strengthens our close ties and offers new potential by expanding opportunities for the workers, businesses, consumers and farmers of both countries. We do not believe that state and local governments will need additional resources to deal with the effects of increased trade under the U.S.-Australia FTA.

Attachment 1

U.S.-Australia Free Trade Agreement Government Procurement Annex Sub-central Entities

Schedule of the United States

This Chapter covers procurement only by those entities listed in this Schedule.

Arkansas

Executive branch agencies, including universities

For the entities listed for Arkansas, this Chapter does not cover procurement by the Office of Fish and Game or construction services.

California

Executive branch agencies

Colorado

Executive branch agencies

Connecticut

Department of Administrative Services

Connecticut Department of Transportation

Connecticut Department of Public Works

Constituent Units of Higher Education

Delaware*

Administrative Services (Central Procurement Agency)

State Universities

State Colleges

Florida*

Executive branch agencies

Georgia

Department of Administrative Services

Georgia Technology Authority

For the entities listed for Georgia, this Chapter does not cover the procurement of beef, compost, or mulch.

Hawaii

Department of Accounting and General Services

For the entities listed for Hawaii, this Chapter does not cover procurement of software developed in the state or construction services.

Idaho

Central Procurement Agency (including all colleges and universities subject to central purchasing oversight)

Kansas

Executive branch agencies

For the entities listed for Kansas, this Chapter does not cover the procurement of construction services, automobiles, or aircraft.

Kentucky

Division of Purchases, Finance and Administration Cabinet

For the entity listed for Kentucky, this Chapter does not cover procurement for construction projects.

Louisiana

Executive branch agencies

Maine*

Department of Administrative and Financial Services

Bureau of General Services (covering state government agencies and school construction)

Maine Department of Transportation

Maryland*

Office of the Treasury

Department of the Environment

Department of General Services

Department of Housing and Community Development

Department of Human Resources

Department of Licensing and Regulation

Department of Natural Resources

Department of Personnel

Department of Public Safety and Correctional Services

Department of Transportation

Mississippi

Department of Finance and Administration

For the entities listed for Mississippi, this Chapter does not cover the procurement of services.

Nebraska

Central Procurement Agency

New Hampshire*

Central Procurement Agency

New York*

State agencies

State university system

Public authorities and public benefit corporations

1. For the entities listed for New York, this Chapter does not cover public authorities and public benefit corporations, with multi-state mandates.

2. For the entities listed for New York, this Chapter does not cover the procurement of transit cars, buses, or related equipment.

Oregon

Department of Administrative Services

Pennsylvania*

Executive branch agencies, including:

Governor's Office
Department of the Auditor General
Treasury Department
Department of Agriculture
Department of Banking
Pennsylvania Securities Commission
Department of Health
Department of Transportation
Insurance Department
Department of Aging
Department of Correction
Department of Labor and Industry
Department of Military Affairs
Office of Attorney General
Department of General Services
Department of Education
Public Utility Commission
Department of Revenue
Department of State
Pennsylvania State Police
Department of Public Welfare
Fish Commission
Game Commission
Department of Commerce
Board of Probation and Parole
Liquor Control Board
Milk Marketing Board
Lieutenant Governor's Office
Department of Community Affairs
Pennsylvania Historical and Museum Commission
Pennsylvania Emergency Management Agency
State Civil Service Commission
Pennsylvania Public Television Network
Department of Environmental Resources
State Tax Equalization Board
Department of Public Welfare
State Employees' Retirement System
Pennsylvania Municipal Retirement Board
Public School Employees' Retirement System
Pennsylvania Crime Commission
Executive Offices

Rhode Island

Executive branch agencies

For the entities listed for Rhode Island, this Chapter does not cover the procurement of boats, automobiles, buses, or related equipment.

South Dakota

Central Procuring Agency (including universities and penal institutions)

For the entities listed for South Dakota, this Chapter does not cover procurement of beef.

Texas

Texas Building and Procurement Commission

For the entity listed for Texas, this Chapter does not apply to preferences for: (1) motor vehicles; (2) travel agents located in Texas; or (3) rubberized asphalt paving made from scrap tires by a Texas facility.

Utah

Executive branch agencies

Vermont

Executive branch agencies

Washington

Washington State executive branch agencies, including:

General Administration

Department of Transportation

State Universities

For the entities listed for Washington, this Chapter does not cover the procurement of fuel, paper products, boats, ships, or vessels.

Wyoming*

Procurement Services Division

Wyoming Department of Transportation

University of Wyoming

Notes to the Schedule of the United States

1. For the United States regional entities marked by an asterisk (*), indicating pre-existing restrictions, this Chapter does not cover procurement of construction-grade steel (including requirements on subcontracts), motor vehicles, or coal.
2. For the United States regional entities, this Chapter does not apply to preferences or restrictions associated with programs promoting the development of distressed areas or businesses owned by minorities, disabled veterans, or women.
3. Nothing in this Annex shall be construed to prevent any state entity from applying restrictions that promote the general environmental quality in that state, as long as such restrictions are not disguised barriers to international trade.
4. This Chapter does not cover any procurement made by a covered entity on behalf of non-covered entities at a different level of government.
5. For the United States regional entities, this Chapter does not apply to restrictions attached to Federal funds for mass transit and highway projects.

6. For the United States regional entities, this Chapter does not cover the procurement of printing services.